



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for money owed or compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenant on December 24, 2009. The tenant confirmed he had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to an Order of Possession?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to money owed for utilities under the *Act* and if so how much?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy started on February 15, 2006. This is a month to month tenancy and rent is \$850.00 per month due on the 1st of each month. The tenant paid a security deposit of \$425.00 on February 07, 2006.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant did not pay his rent on the day it was due and the landlord issued a 10 Day Notice to End Tenancy for unpaid rent on December 15, 2009. This was given to the tenant in person and the tenant signed the document to agree that he had received it. This Notice indicates that the tenant owed rent of \$900.00 and utilities of \$190.21. The tenant had five days to either pay the outstanding rent and utilities or apply for Dispute Resolution or the tenancy would end on December 25, 2009. The tenant did not pay all the outstanding rent or dispute the Notice within five days. The tenant made a payment on December 19, 2009 of \$750.91 of which \$560.00 was towards the rent arrears and \$190.91 was for the outstanding utilities. This has left the balance of rent arrears at \$340.00. The landlord has requested to amend his application to also recover the unpaid rent and utilities for January, 2010 of \$850.00 and \$252.35. I have allowed this amendment due to the time taken for this application to be heard.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenant does not dispute the landlords' evidence that he owes rent to an amount of \$1,190.00 and utilities of \$252.35. Therefore, I find that the landlord is entitled to recover rent arrears and outstanding utilities pursuant to s. 67 of the *Act*. As the landlord has been successful in this matter, she is also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep the tenants security deposit of \$425.00 and accrued interest of \$14.82 in partial satisfaction of the outstanding rent owed to her by the tenant pursuant to s. 38 (4)(b) of the *Act*. A Monetary Order has been issued for the following amount:

Rent arrears	\$1,190.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$439.82)



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Total amount due to the landlord	\$1,052.53
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I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,052.53**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 29, 2010.

Dispute Resolution Officer